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23 *Local Counsel for Plaintiffs*

24 UNITED STATES DISTRICT COURT
25 FOR THE NORTHERN DISTRICT OF CALIFORNIA
26 SAN FRANCISCO DIVISION

27 SIERRA CLUB, et al.,) Case No. 3:08-cv-01409-WHA
28 Plaintiffs,)
29 v.) STIPULATED SETTLEMENT ON
30 STEPHEN JOHNSON, et al.,) PLAINTIFFS' MOTION FOR
31 Defendants,) ATTORNEYS' FEES AND COSTS;
32 and) ~~PROPOSED~~ ORDER
33 SUPERFUND SETTLEMENTS PROJECT, et al.,)
34 Defendant-Intervenors.)

35 STIPULATED SETTLEMENT ON PLAINTIFFS'
36 MOTION FOR ATTORNEYS' FEES AND COSTS;
37 ~~PROPOSED~~ ORDER (Case No. 3:08-cv-01409-WHA) -1-

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1 Pursuant to Local Rule 7-12 and 54-6, this Stipulated Settlement is entered into by and
2 between plaintiffs, Sierra Club, Great Basin Resource Watch, Amigos Bravos, and Idaho
3 Conservation League, and the United States of America (“United States”), on behalf of defendants
4 United States Environmental Protection Agency (“EPA”) and United States Department of
5 Transportation (“DOT”), to settle plaintiffs’ claim for attorneys’ fees and costs of litigation in the
6 above-captioned matter.

7 Plaintiffs and defendants, by and through their undersigned counsel, state as follows:

8 WHEREAS, on March 12, 2008, plaintiffs brought suit under the Comprehensive
9 Environmental Response, Compensation and Liability Act (“CERCLA”), 42 U.S.C. §§ 9601- 9675,
10 and the Administrative Procedure Act, 5 U.S.C. § 706, alleging that defendants failed to perform
11 certain nondiscretionary duties under CERCLA Section 108(b), 42 U.S.C. § 9608(b);

12 WHEREAS, this Court granted in part and denied in part defendants’ motion to dismiss in
13 two orders dated July 23, 2008, and August 8, 2008;

14 WHEREAS, this Court granted in part and denied in part the parties’ cross-motions for
15 summary judgment in two separate orders, dated February 25, 2009, and August 5, 2009;

16 WHEREAS, plaintiffs moved for an award of fees and costs pursuant to CERCLA’s citizen
17 suit provision, which defendants opposed;

18 WHEREAS, this Court ruled that plaintiffs were entitled to an award of fees and costs
19 commensurate with the level of success achieved by plaintiffs, and directed plaintiffs to resubmit
20 their fee application in accordance with specific limits and procedures;

21 WHEREAS, in lieu of additional litigation on the fee motion, plaintiffs and defendants have
22 reached an agreement as to an appropriate settlement of plaintiffs’ motion for fees and costs and
23 agree that settlement of this action in this manner is in the public interest and is an appropriate way
24 to resolve plaintiffs’ motion.

25 NOW, THEREFORE, IT IS STIPULATED BY AND BETWEEN THE PARTIES AS
26 FOLLOWS:

27
28 STIPULATED SETTLEMENT ON PLAINTIFFS’
MOTION FOR ATTORNEYS’ FEES AND COSTS;
[PROPOSED] ORDER (Case No. 3:08-cv-01409-WHA) -2-

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1 1. Within 60 days of the Court's entry of this Stipulated Settlement, the United
2 States, on behalf of EPA and DOT, agrees to pay to plaintiffs \$114,174.00 in attorneys' fees and
3 \$1,184.00 in costs, pursuant to Local Rule 54 and 42 U.S.C. § 9659(f). Payment will be made by
4 electronic funds transfer in accordance with instructions provided to defense counsel by
5 plaintiffs' counsel.

6 2. Any obligation of the United States to expend funds under this Stipulated
7 Settlement are subject to the availability of appropriations in accordance with the Anti-
8 Deficiency Act, 31 U.S.C. § 1341. This Stipulated Settlement shall not be construed to require
9 the United States to obligate or pay funds in contravention of said Anti-Deficiency Act,
10 31 U.S.C. § 1341.

11 3. Plaintiffs agree to accept payment of \$115,358.00 in full satisfaction of any and
12 all claims for attorneys' fees and costs of litigation to which plaintiffs are entitled in the above-
13 captioned litigation, through and including the date of this agreement.

14 4. Plaintiffs agree that receipt of this payment from the United States shall operate as
15 a release of plaintiffs' claims for attorneys' fees and costs in this matter, through and including
16 the date of this agreement.

17 5. The parties agree that this Stipulated Settlement was negotiated in good faith and
18 constitutes a settlement of claims that were vigorously contested, denied, and disputed by the
19 parties. Except as provided in paragraphs 3 and 4 above, by entering into this Stipulated
20 Settlement the parties do not waive any claim or defense.

21 6. The undersigned representatives of each party certify that they are fully
22 authorized by the party or parties they represent to agree to the Court's entry of the terms and
23 conditions of this Stipulated Settlement and do hereby agree to the terms herein.

24 7. The terms of this Stipulated Settlement shall become effective upon entry of an
25 order by the Court ratifying the Agreement.

1 It is so stipulated this 29th day of January, 2010.
2
3
4

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4 * per email authorization

5 /s/ Jan Hasselman, for *
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10 *Attorney for Federal Defendants*

11 Pursuant to the above stipulation, the settlement reached between the parties pertaining
12 to plaintiffs' motion for attorney's fees and costs is hereby **APPROVED**.

13
14 **IT IS SO ORDERED.**

15
16 Dated: February 1, 2010.

